

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE

05 APR -1 P 2:37

CIVIL ACTION NO. 04-11958-RGS

U.S. DISTRICT COURT
DISTRICT OF MASS.

MARTIN J. GALVIN, JR., ED.D.,

Plaintiff,

vs.

THE TOWN OF YARMOUTH, PETER
L. CARNES AND STEVEN XIARHOS,

Defendants.

PLAINTIFFS' MOTION TO AMEND COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a), Plaintiff Martin J. Galvin, Jr., Ed.D., hereby moves for leave to amend his Complaint to specify the basis of his claim pursuant to Mass. Gen. L. ch. 12, §§ 11H and 11I, and to add a claim pursuant to 42 U.S.C. § 1983. In support of this motion the Plaintiff state as follows:

1. While the Plaintiff is not subject to any heightened pleading standard relative to civil rights claims in this federal forum, Lecrenski Bros. Inc. v. Johnson, 312 F.Supp.2d 117, 122 (D.Mass.,2004), citing, Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 169, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993); Fed. R. Civ.P. 8(a) (pleading need only set forth "a short and plain statement of the claim showing that the pleader is entitled to relief"), the specification of Plaintiff's claim pursuant to Mass. Gen. L. ch. 12, §§ 11H and 11I will assist to clarify and narrow the issues in this case.

2. Leave to amend "shall be freely given when justice so requires," Fed. R. Civ. P. 15(a), unless there appears to be an adequate reason for the denial of leave to amend (e.g., undue delay, bad faith, dilatory motive, futility of amendment, prejudice). Mirpuri v. ACT Mfg., Inc., 212 F.3d 624, 627-28 (1st Cir. 2000). None of these factors are present here.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court grant the Plaintiff leave to amend his Complaint. A copy of the proposed First Amended Complaint is filed herewith.

MARTIN J. GALVIN, JR., ED.D.

By his attorney,



Matthew P. Zayotti, BBO #638265
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, Massachusetts 02110-3113
(617) 951-1400

Dated: April 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document(s) was served upon the attorney of record for each other party by hand-delivery - US Mail on 4/1/05

